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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,408	09/03/2003	Leonard Arnold Duffy	PRO SE	5456
7590	01/12/2005		EXAMINER	
Leonard Duffy Chittenden Research & Development, LLC P.O. Box 99 Hinesburg, VT 05461			KING, ANITA M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/654,408

Applicant(s)

DUFFY ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2,4-11,14,15 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,12,13,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/3/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

This is the first office action for application number 10/654,408, Folding Cantilever Support and Method, filed on September 3, 2003.

Information Disclosure Statement

The information disclosure statement filed September 3, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each foreign patent and all other information or that portion which caused it to be listed. However, it has been placed in the application file and the information referred to therein has been considered.

Election/Restrictions

Claims 4-11, 14, 15, and 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 20, 2004.

Drawings

The drawings are objected to because reference number "24" is not in Fig. 2A as specified by the specification on page 12, line 8. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 12, 13, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said upper surface" in line 8. There is insufficient antecedent basis for this limitation in the claim.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 1 clearly indicates that a subcombination is being claimed, e.g., "a

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portable device for supporting a load in a cantilevered disposition relative to a generally horizontal extant structure...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a portable device," the load and the generally horizontal extant structure/shelf and the components thereof being only functionally recited. This presents no problem as long as the body of the claim also refers to the load and the structure functionally.

The problem arises when the structure (and its components, i.e., the edge, top surface, and bottom surface) is positively recited within the body of the claim, such as, "wherein said hanging bracket is pivotably attached to said platform portion and to said bracing portion at a first axis generally parallel to said edge," cited in lines 10-11 of claim 1; "wherein the platform portion extends from said extant structure..." in claim 3, lines 1-2; and "said portions being divided by an axis generally parallel to an edge of said shelf," in lines 5-6 of claim 17. The examiner cannot be sure if applicant's intent is to claim merely the portable device or the device in combination with the structure or shelf.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the device alone or the combination of the device and the structure/shelf.

Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination, i.e., the device, and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in

the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 12, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,074,745 to Burckhalter. Burckhalter discloses a portable device (11) for supporting a load in a cantilevered disposition and capable of supporting the load relative to a generally horizontal extant structure, the device comprising: a platform portion (12); a bracing portion (rear section of element 12) for transferring the moment reaction caused by the load; at least one hanging bracket (15) connecting the device to a surface of a structure (10); wherein the hanging bracket is pivotably attached (Col. 2, line 18ff) to the platform portion and to the bracing portion at a first axis; and wherein the platform portion extends from the structure in a generally sloped disposition; at least one lateral restraining member (12).

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 1,878,864 to Lane et al., hereinafter, Lane. Lane inherently teaches the method of supporting a load in a cantilevered disposition from an extant horizontal structure (10) comprising: providing a device (14) which includes at least a platform portion (15), a

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bracing portion (25), and a pivotably attached hanging bracket (22) connected at a first axis (@21); providing an extant horizontal structure having an edge (12), a top surface (11), and a bottom surface; extending a distal end (@23) of the hanging bracket away from the platform portion and the bracing portion; hanging the distal end of the hanging bracket from the top surface adjacent to edge of the extant structure; and engaging the bracing portion with the bottom surface of the extant horizontal structure (Fig. 5) in an area remote from the edge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burckhalter in view of U.S. Patent 6,045,159 to Bellah. Burckhalter discloses the claimed invention except for the limitation of a flexible linear element attached to the device. Bellah teaches a device having a platform having at least one flexible linear element (60) attached to the device at only one end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Burckhalter to have included the flexible linear element as taught by Bellah for the purpose of providing for marking a page of book when supported by the device.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,346,703 to Rauen et al.

U.S. Patent 2,771,332 to McGinley

U.S. Patent 2,798,780 to Motorney

U.S. Patent 2,814,154 to Krueger

U.S. Patent 3,662,982 to Antonius

U.S. Patent 4,239,170 to Planebo

U.S. Patent 5,829,787 to Newhouse, Jr.

U.S. Patent 6,038,983 to Lendl

U.S. Patent 6,435,634 to Webb et al.


U.S. Patent 6,619,609 to Cress

Rauen et al. disclose a rack having a pivotal lateral retaining member. McGinley and Motorney both disclose a serving tray having a platform, hanging bracket and bracing element. Krueger discloses a removable file support for cabinets. Antonius discloses a collapsible support for serving trays. Planebo discloses a means for supporting a writing board. Newhouse, Jr. discloses a book holder having a flexible linear leaf support. Lendl discloses a table arrangement for a motor vehicle. Webb et al. disclose a document display shelf apparatus. Cress discloses an apparatus for supporting articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

January 9, 2005